

A12620

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In the Matter of the Application  
For Post-Conviction Relief of:

GARETH RAY DEMOSKI

Case No. 4FA-13-01862CI

**ORDER VACATING DISMISSAL OF PETITION  
AND APPOINTING COUNSEL**

Following Mr. Demoski's appeal of the dismissal of his Post-Conviction Relief petition, the Court of Appeals remanded the matter to this court. On remand, the appellate court directed this court to direct Mr. Demoski's attorney to "provide the court with a full explanation of all the claims the attorney has considered and why the attorney has concluded that these claims are frivolous."<sup>1</sup>

This court has considered Mr. Demoski's attorney's explanation for filing a facially deficient application on Mr. Demoski's behalf. In the attorney's Response to Court of Appeals Inquiry, filed December 13, 2019, he explained that his choice of claims to present was founded in strategic considerations, and not because Mr. Demoski's ineffective assistance of counsel claims are not colorable. The record demonstrates that the attorney conducted a review of the record and an investigation of the ineffective claims, but stopped short of formulating those claims so that they had a chance of surviving a motion to dismiss. The attorney is clear that the ineffective claims that the attorney chose not to pursue are not frivolous claims. Therefore, this court finds that at least some of Mr. Demoski's claims are colorable and that Mr. Demoski should be allowed to pursue those claims.

<sup>1</sup> *Griffin v. State*, 18 P.3d 71, 77 (Alaska App. 2001).

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Therefore, IT IS HEREBY ORDERED that the Order After Reconsideration, dated May 9, 2016, which dismissed Mr. Demoski's Second Amended Application for Post-Conviction Relief, is HEREBY VACATED.

Further, the Office of Public Advocacy is HEREBY APPOINTED to represent Mr. Demoski in this matter.

DATED this 2<sup>nd</sup> of February, 2020 at Fairbanks, Alaska.

A handwritten signature in cursive script, appearing to read "Brent Bennett", is written over a horizontal line.

BRENT E. BENNETT  
Superior Court Judge